

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of )  
MURNA KALMS, et al. )

Appearances:

For Appellants: David Kalms  
Business Manager

For Respondent: Kendall, E. Kinyon  
Mark McEvilly  
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the actions of the Franchise Tax Board on the protests of Murna Kalms, et al., against proposed assessments of additional personal income tax and penalties in the total amounts and for the years as follows:

<u>Appellant</u>	<u>Year</u>	<u>Proposed Assessment Including Penalties</u>
Murna Kalms	1977	\$3,382.38
Raymond Malinda	1978	\$ 858.38
James H. Rose	1979	\$ 937.58

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These appeals have been consolidated for hearing and disposition because of appellants' common representation and the presence of substantially identical factual situations. The common issue presented by these appeals is whether appellants have established error in respondent's proposed assessments of additional personal income tax or in the penalties assessed for the years in issue.

Respondent received information indicating that appellants Murna Kalms and Raymond Malinda were required to file California income tax returns for the years 1977 and 1978, respectively. Respondent so advised these appellants, and demanded that they file any required returns; appellants did not respond. Thereafter, respondent issued notices of proposed assessments based upon information received from the California Employment Development Department. The proposed assessments also included penalties for failure to file a return, failure to file upon notice and demand, and negligence; a penalty for failure to pay estimated income tax was included in the assessment issued appellant Raymond Malinda. The subject matter of appellant James H. Rose's appeal arises out of the same series of events and circumstances which gave rise to his appeal of proposed assessments issued him for the years 1973, 1974, and 1975. (See Appeal of James H. Rose, Cal. St. Bd. of Equal., Oct. 28, 1980.) The ration of those events and circumstances is herein incorporated by reference. The subject proposed assessment includes penalties for failure to file a return, failure to file upon notice and demand, failure to pay estimated income tax, and negligence.

It is well settled that respondent's determinations--of tax are presumptively correct, and appellants bear the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) No such proof has been presented here.

In support of their position, appellants have advanced a host of familiar contentions, including, inter alia, that Federal Reserve notes do not constitute lawful money or legal tender. Each of the "arguments" raised by appellants was rejected as being without merit in the Appeals of Fred R. Dauberger, et al., decided by this board on March 31, 1982. (See also Appeal of James H. Rose,

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supra.) **We see** no reason to depart from the cited decisions in these appeals.

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellants' tax liability, and that the imposition of penalties was fully justified. Respondent's actions in these matters will, therefore, be sustained.

Finally, we note that appellant James H. Rose has brought two previous appeals before this board wherein he raised the same frivolous arguments rejected here. (Appeal of James H. Rose, Cal. St. Bd. of Equal., Oct. 27, 1981; Appeal of James H. Rose, Cal. St. Bd. of Equal., Oct. 28, 1980.) As we stated in the Appeals of Robert R. Aboltin, Jr., et al., decided on June 29, 1982, "[t]o pursue an appeal under such circumstances can only be construed as an attempt to obstruct and delay the appellate review process." We find that the aforementioned appellant instituted and has pursued his appeal merely for the purpose of delay. Accordingly, pursuant to Revenue and Taxation Code section 19414, <sup>1/</sup> a penalty in the amount of five hundred dollars (\$500) shall be imposed against him.

1/ Section 19414 provides as follows:

Whenever it appears to the State Board of Equalization or any court of record of this state that proceedings before it under this part have been instituted by the taxpayer merely **for** delay, a penalty in an amount not in excess of five hundred dollars (\$500) shall be imposed. Any penalty so imposed shall be paid upon notice and demand from the Franchise Tax Board and shall be collected as a tax.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the actions of the Franchise Tax Board on the protests of Murna Kalms, et al., against proposed assessments of additional personal income tax and penalties in the total amounts and for the years as follows:

<u>Appellant</u>	<u>Year</u>	<u>Proposed Assessment Including Penalties</u>
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James H. Rose	1979	\$ 937.58

be and the same are hereby sustained, and that a \$500 delay penalty under section 19414 be imposed against James H. Rose and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 21st day of September, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

John W. Bennett, Chairman  
Paul Stein, Member  
Wesley Dronenburg, Member  
John Collis, Member  
John Nevins, Member